



RECEIVED
CENTRAL FAX CENTER
AUG 31 2006

Fax

TRANSMISSION COVER SHEET

TO: ATTN: Examiner Edward J. Webman
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PTO FACSIMILE NUMBER: 571-273-8300

FROM: Michael Atkins
ALZA Corporation
c/o Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
Tel: (650) 564-5887

ALZA FACSIMILE NUMBER: (650) 564-2195

DATE: August 31, 2006

RE: U.S. Serial No.: 10/696,370
Filing Date: October 28, 2003
Attorney Docket No.: AL02164USACON1

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 17

1. Notice of Concurrent Litigation (2 pp.)
2. Copy of Complaint Commencing the Litigation (14 pp.)

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL
Amy Alwine at (650) 564-2969

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE SOLELY TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

ALZA CORPORATION

1900 CHARLESTON ROAD P.O. BOX 7210
MOUNTAIN VIEW CA 94039-7210

PHONE 650.564.5000
<http://www.alza.com>

RECEIVED
CENTRAL FAX CENTER

AUG 31 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: ALZA CORPORATION Inventor(s): David E. Edgren et al. Title: ANTIDEPRESSANT DOSAGE FORM Application No.: 10/696,370 Filing Date: October 28, 2003	Examiner: Edward J. Webman Group Art Unit: 1616 Atty Docket No. AR02164USACON1
---	---

Submitted via Fax
ATTN: Examiner Edward J. WEBMAN
Group Art Unit: 1616
Fax No.: 571-273-8300

NOTICE OF CONCURRENT LITIGATION

Dear Sir:

The Examiner is hereby notified of concurrent litigation pending in the United States District Court for the Eastern District of Texas captioned *Alza Corp. v. Wyeth, et al.*, Civil Action No. 9:06-cv-00156-RHC. The litigation involves United States Patent No. 6,440,457, which issued from Application No. 08/068,480 ("the '480 application"). The application before the examiner is a continuation of Application No. 08/442,292, abandoned, which is a divisional of the '480 application. Exhibit 1 to this Notice is a copy of the complaint commencing the litigation, which was filed on July 26, 2006. No responsive pleading has yet been filed.

Respectfully Submitted,

Dated: 8/31/06

Michael Atkins
Michael Atkins
Registration No. 35,431
Attorney for the Applicants
Customer No. 27777

ALZA Corporation
c/o Johnson & Johnson
One Johnson & Johnson Plaza, WH 3221
New Brunswick, NJ 08933
Phone: 650-564-5887
Fax: 650-564-2195

Case 9:06-cv-00156-RHC Document 1 Filed 07/26/2006 Page 1 of 14

RECEIVED
CENTRAL FAX CENTER
AUG 31 2006UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISIONFILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUL 26 2006

ALZA CORPORATION, a Delaware
corporation,

Plaintiff,

v.

WYETH, a Delaware corporation, and
WYETH PHARMACEUTICALS, INC., a
Delaware corporation,

Defendants.

DAVID J. MALAND, CLERK

DEPUTY *Rob M. M...*C.A. No. *9:06cv156*

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Alza Corporation ("Alza"), by its undersigned counsel, brings this action for patent infringement against defendants Wyeth and Wyeth Pharmaceuticals, Inc. (collectively "Defendants") and alleges as follows:

Jurisdiction and Venue

1. This action is based upon the Patent Laws of the United States, Title 35 of the United States Code, for infringement of United States Patent No. 6,440,457 ("the '457 Patent").
2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
3. Venue properly lies in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).
4. This Court has personal jurisdiction over Defendants.

Exhibit 1

Case 9:06-cv-00156-RHC Document 1 Filed 07/26/2006 Page 2 of 14

Parties

5. Alza is a Delaware corporation with a principal place of business at 1900 Charleston Road, Mountain View, California 94039.

6. On information and belief, Wyeth is a Delaware corporation with a principal place of business at Five (5) Giraldo Farms, Madison, New Jersey 07940.

7. On information and belief, Wyeth Pharmaceuticals, Inc., is a Delaware corporation with a place of business at 500 Arcola Road, Collegeville, Pennsylvania 19426.

8. On information and belief, Wyeth Pharmaceuticals, Inc., is a subsidiary of Wyeth.

9. On information and belief, at least in part for its own benefit, Wyeth directed, authorized, assisted, cooperated with, or participated in the acts of Wyeth Pharmaceuticals, Inc., about which Alza complains.

Claim of Patent Infringement

10. Alza rec alleges paragraphs 1 through 9 above as if fully set forth herein.

11. On August 27, 2002, the '457 Patent, entitled "Method of Administering Antidepressant Dosage Form," was duly and legally issued by the United States Patent and Trademark Office to Alza as the assignee of the inventors, David Emil Edgren, Gurdish Kaur Bhatti, Zahedeh Hatamkhani, and Patrick S. L. Wong. The '457 Patent remains in full force and effect and will expire no earlier than August 27, 2019. A true and correct copy of the '457 Patent is attached to this Complaint as Exhibit A.

12. Alza has been and remains the owner of all right, title, and interest in and to the '457 Patent.

13. On information and belief, Defendants contributorily infringe and induce infringement of Claim 1 of the '457 Patent under 35 U.S.C. § 271, including but not limited to

Case 9:06-cv-00156-RHC Document 1 Filed 07/26/2006 Page 3 of 14

§§ 271(b)-(c) and (i). Defendants contributorily infringe and induce infringement of the '457 Patent through various activities including but not limited to the manufacture, use, sale, and offer for sale of Effexor® XR products in the United States after the '457 Patent issued.

14. On information and belief, Defendants knew of the '457 Patent at all relevant times before making, using, selling, or offering for sale Effexor® XR products.

15. On information and belief, Defendants have in the past offered for sale and sold, and continue to offer for sale and sell Effexor® XR products that constitute a material part of the invention claimed in the '457 Patent and that have no substantial use other than as an infringement of the '457 Patent.

16. On information and belief, Defendants knew and intended that purchasers of Effexor® XR products would use the products in methods so as to infringe the '457 Patent.

17. On information and belief, Defendants have actively induced purchasers of Effexor® XR products to use the products in methods so as to infringe the '457 Patent.

18. On information and belief, purchasers of Effexor® XR products use the products in methods so as to infringe the '457 Patent.

19. On information and belief, Defendants have in the past willfully infringed, and continue to willfully infringe, the '457 Patent through their manufacture, use, sale, and offer for sale of Effexor® XR products.

Prayer For Relief

WHEREFORE, Alza prays for a judgment against Defendants as follows:

(a) adjudging that Defendants have infringed the '457 Patent under 35 U.S.C.

§ 271;

Case 9:06-cv-00156-RHC Document 1 Filed 07/26/2006 Page 4 of 14

(b) ordering Defendants to account for and pay to Alza all damages caused to Alza by reason of Defendants' infringement of the '457 Patent, together with prejudgment interest on all damages;

(c) increasing the damages three times based on the willful nature of Defendants' infringement under 35 U.S.C. § 284;

(d) granting Alza its reasonable attorney fees under 35 U.S.C. § 285; and

(e) for such further and additional relief as this Court deems just and proper.

Date: July 26, 2006

By: 

J. Thad Heartfield
Texas Bar No. 09346800
LAW OFFICES OF
J. THAD HEARTFIELD
2195 Dowlen Rd.
Beaumont, TX 77706
Telephone: (409) 866-3318
Fax: (409) 866-5789
E-mail: thad@jth-law.com

Attorneys for Plaintiff Alza Corporation

Case 9:06-cv-00156-RHC Document 1 Filed 07/26/2006 Page 5 of 14

Exhibit A

U.S. Patent No. 6,440,457